# FEDERAL JURY IMPROVEMENTS ACT OF 1982

# HEARING

BEFORE THE

## SUBCOMMITTEE ON AGENCY ADMINISTRATION

OF THE

## COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

## S. 2863

A BILL TO AMEND TITLE 28 TO PROVIDE PROTECTION TO ALL JURORS IN FEDERAL CASES TO CLARIFY THE COMPENSATION OF ATTORNEYS FOR JURORS IN PROTECTING THEIR EMPLOYMENT RIGHTS, AND AUTHORIZING THE SERVICE OF JURY SUMMONSES BY ORDINARY MAIL

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# CONTENTS

## OPENING STATEMENT


Page

Grassley, Chairman Charles E ..... 1


## CHRONOLOGICAL LIST OF WITNESSES


Finn, Timothy J., Deputy Assistant Attorney General, Office of Legal Policy, Department of Justice ..... 3

Clarie, Judge T. Emmet, Chairman, Committee on the Operation of the Jury System, and Chief Judge, U.S. District Court for the District of Connecticut; Chief Judge Miles Lord, U.S. District Court for the District of Minnesota, accompanied by William R. Burchill, Jr., Deputy General Counsel, Administrative Office of the U.S. Courts ..... 9

Hoffman, Herbert E., Special Committee on Coordination of Federal Judicial Improvements, American Bar Association, accompanied by Robert Torresen, law student intern, Washington office ..... 18


## ALPHABETICAL LIST AND SUBMITTED MATERIAL


Burchill, William R., testimony ..... 9

Clarie, Judge T. Emmet, testimony ..... 9

Finn, Timothy J.:

- Testimony ..... 3
- Prepared statement ..... 6

Grassley, Senator Charles E., proposed legislation ..... 2

Hoffman, Herbert E.:

- Testimony ..... 18
- Prepared statement ..... 21

Lord, Chief Judge Miles, testimony ..... 9


## APPENDIX

### Mail Savings Estimate


Letters from:

- U.S. Court of Appeals for the Ninth Circuit, February 12, 1982, with cost comparison ..... 27
- Judicial Council of the Eighth Circuit, U.S. Courts, April 5, 1982, with administrative order and cost comparison ..... 29
- U.S. Courts for the District of Columbia Circuit, July 16, 1982 ..... 32
  - Memorandum to Charles Nelson, from James E. Davey, July 16, 1982 33
  - Letter to Charles E. Nelson, from William James Weller, July 20, 1982 ..... 34
- U.S. Court of Appeals, Eleventh Judicial Circuit, July 20, 1982, with cost comparison ..... 35
- Judicial Council of the Third Circuit, July 16, 1982 ..... 37
  - Letter, to Paul Nejelski, from William James Weller, July 20, 1982 ..... 38
- U.S. Court of Appeals, Fourth Circuit, July 19, 1982, with cost comparison 39
- Judicial Council of the Seventh Circuit, July 21, 1982, with cost comparison ..... 41
- U.S. Court of Appeals for the First Circuit, July 22, 1982 ..... 42
- U.S. Court of Appeals, Fifth Judicial Circuit, July 22, 1982, with cost comparison ..... 43

Letters from—Continued
U.S. Courts, Judicial Council of the Second Circuit, July 5, 1982, with cost comparison ..... Page 45

COST ESTIMATE

Letter from William James Weller, Legislative Affairs Officer, Administrative Office of the U.S. Courts, to David Beier III, counsel, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House Judiciary Committee, July 20, 1982 ..... 46

REPORT

Report to the House of Delegates, recommendation of Special Committee on Coordination of Federal Judicial Improvements, American Bar Association .. 47

# FEDERAL JURY IMPROVEMENTS ACT OF 1982

THURSDAY, SEPTEMBER 23, 1982

U.S. SENATE,
SUBCOMMITTEE ON AGENCY ADMINISTRATION,
COMMITTEE ON THE JUDICIARY,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 6226, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the subcommittee) presiding.

Staff present: John Maxwell, chief counsel and staff director; Lisa Hovelson, professional staff member; and Susan Shirk, chief clerk.

## OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. The Subcommittee on Agency Administration will come to order.

Today, we are going to be holding hearings on S. 2863, a three-part bill relating to the operations of the Federal jury system. Specifically, this bill would extend the Federal Employees' Compensation Act coverage to all Federal jurors. It would also clarify the awarding of attorneys' fees for Government-funded attorneys when jurors are successful litigants against their employers, and authorize the service of jury summonses by ordinary mail.

As a package, this bill will not only correct certain inconsistencies in the current law regarding jurors, but also establish a more efficient jury operation resulting in significant cost savings to the Government. All three of these provisions are well-studied recommendations of the Judicial Conference of the United States. I thank the Conference for its diligent efforts to improve our jury system and look forward to testimony from its representatives as well as testimony from our other witnesses here today. I hope this support will provide the needed impetus to transform these recommendations into law. Among the provisions of this bill is one authorizing injury coverage for all Federal jurors. Currently, only those jurors who are also Federal employees are eligible for coverage in the event of a duty-related injury.

The law governing such compensation, Public Law 93-416 enacted in 1974, failed to extend benefits to private citizen jurors. However, in its report, the Senate Committee on Labor and Public Welfare expressly supported coverage of all jurors, leaving that clarification to the Judiciary Committee. Considering the fact that 8 years have passed since that recommendation was made, and little if any opposition has surfaced, I believe it is time for action.

While fortunately, juror mishaps are rare, district courts report a number of instances where jurors have sustained injuries during the course of their duty. In some cases, jurors have suffered financial loss for medical expenses or time absent from employment, but because of their status as private sector employees lacked the eligibility to obtain compensation. The problem addressed by this proposal may be small in numerical and financial dimensions. But as a matter of equity, it is vital that jurors be afforded the same financial protection against injuries occurring during their service as any other Federal employee who is injured either on the job or while on court leave to perform jury duty.

The remaining two sections of this bill stem from Judicial Conference studies to implement a more efficient and Government cost-saving jury administration. The first section is a fine-tuning of the Jury System Improvements Act to specifically authorize the repayment of attorneys' fees when the counsel is publicly funded, thus assuring reimbursement of taxpayer money used in these specific cases. The second section, related to delivery of juror summonses, will likely save the court administration budget several hundred thousand dollars each year. I will defer to our able witnesses from the Judicial Conference to expound on these recommendations and the specific savings expected from each.

INTRODUCTION OF WITNESSES

I would like to welcome all of our witnesses today, Mr. Timothy Finn, Judge Emmet Clarie, Judge Miles Lord, and Mr. Herbert Hoffman.

Mr. Finn is Deputy Assistant Attorney General for the Office of Legal Policy and will be representing the Department of Justice.

Representing the U.S. Judicial Conference will be Judge Clarie and Judge Lord. Judge Clarie is chief judge of the District of Connecticut and serves as chairman of the Conference Committee on Operation of the Jury System. Judge Lord is a former U.S. attorney and attorney general for the State of Minnesota. He currently serves as chief judge for the District of Minnesota. Accompanying Judge Clarie and Judge Lord is William Burchill, Deputy Counsel for the Administrative Office of the U.S. Court.

Representing the American Bar Association is Mr. Herbert Hoffman. Mr. Hoffman is former director of the ABA's Washington office and serves as a member of the ABA special committee on coordination of Federal judicial improvements.

I want to thank each of the witnesses for consenting to be with us today. We appreciate your taking time from your busy schedules.

Before we begin testimony, I would ask that the bill, S. 2863, be included in the record.

[Text of S. 2863 follows:]

[S. 2863, 97th Congress, 3d Session]

A BILL To amend title 28 to provide protection to all jurors in Federal cases to clarify the compensation of attorneys for jurors in protecting their employment rights, and authorizing the service of jury summonses by ordinary mail

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 1875(d) of title 28, United States Code, is amended—

(1) by inserting "(1)" immediately after "(d)"; and

(2) by amending paragraph (2) to read as follows:

"(2) In any action or proceeding under this section, the court may award a prevailing employee who brings such action by retained counsel a reasonable attorney's fee as part of the costs. The court may tax a defendant employer, as costs payable to the court, the attorney fees and expenses incurred on behalf of a prevailing employee, where such costs were expended by the court pursuant to paragraph (1) of this subsection. The court may award a prevailing employer a reasonable attorney's fee as part of the costs only if the court finds that the action is frivolous, vexatious, or brought in bad faith.".

SEC. 2. (a) The second paragraph of section 1866(b) of title 28, United States Code, is amended to read as follows:

"Each person drawn for jury service may be served personally, or by registered, certified, or first-class mail addressed to such person at his usual residence or business address.".

(b) The fourth paragraph of section 1866(b) of title 28, United States Code, is amended to read as follows:

"If such service is made by mail, the summons may be served by the marshal or by the clerk, the jury commission or their duly designated deputies, who shall make affidavit of service and shall attach thereto any receipt from the addressee for a registered or certified summons.".

SEC. 3. Chapter 121 of title 28, United States Code, is amended—

(1) by adding at the end thereof the following:

**"§ 1877. Protection of jurors**

"(a) Subject to the provisions of this section and title 5 of the United States Code, subchapter 1 of chapter 81, title 5, United States Code, applies to a Federal grand or petit juror, except that entitlement to disability compensation payments does not commence until the day after the date of termination of service as a juror.

"(b) In administering this section with respect to a juror covered by this section—

"(1) a juror is deemed to receive monthly pay at the minimum rate for grade GS-2 of the General Schedule unless his actual pay as a Government employee while serving on court leave is higher, in which case monthly pay is determined in accordance with section 8114 of title 5, United States Code, and

"(2) performance of duty as a juror includes that time when a juror is (A) in attendance at court pursuant to a summons, (B) in deliberation, (C) sequestered by order of a judge, or (D) at a site, by order of the court, for the taking of a view."; and

(2) by amending the table of sections for such chapter by adding after the item relating to section 1876, the following:

"1877. Protection of jurors.".

SEC. 4. Section 8101 of title 5, United States Code, is amended in paragraph (F) of subsection (1) by striking out "juror" through the end of such paragraph and inserting in lieu thereof "juror;".

Senator GRASSLEY. Our first witness today, already at the table, is Mr. Finn, with the Department of Justice. I would state to you that your entire statement will be placed in the record. It is relatively short anyway, I realize, and you may pursue whatever course you desire, of either summary or reading.

**STATEMENT OF TIMOTHY J. FINN, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE**

Mr. FINN. Thank you very much, Senator. I will summarize my statement.

I am very pleased to appear before the Subcommittee on Agency Administration to state the support of the Department of Justice for S. 2863. As you noted, these proposals were initially submitted to Congress by the Administrative Office of the U.S. Courts on behalf of the Judicial Conference of the United States.

We have reviewed the rationale advanced by the Judicial Conference in recommending passage of this bill, and we find it persuasive. Section 1 of the bill would allow the court to tax a defendant employer the attorney fees incurred by the Government for a court-appointed attorney representing a juror who prevails in an action against an employer under section 1875 of title 28 of the United States Code. Section 1875 provides a Federal cause of action in favor of an employee whose employment rights are infringed by his employer as a result of the employee's jury service. As you know, it is already provided by section 1875 that first, such an employee may have a court-appointed attorney to be paid out of Government funds, and second, that a court may award a prevailing employee who retains his own counsel reasonable attorneys' fees against the defendant employer.

Section 1 of this bill would provide that the attorneys' fees for a prevailing employee with a court-appointed attorney may also be taxed against the defendant employer by the court. It certainly seems to us incongruous that an attorney paid directly by a prevailing employee may have his fees reimbursed by the defendant employer when, in an identical case, with a court-appointed attorney, the Government is left paying the fees. The proposed revision would increase the incentive of private employers to protect the employment rights of jurors and would shift the financial burden of some litigation from the Government to an offending employer in appropriate cases.

Section 2 of the bill would allow district courts the option of serving jury summonses by regular first class mail. As you noted, under current law, they are limited to personal service of registered or certified mail. The efficiency and cost arguments advanced by the Judicial Conference in favor of this proposal are obvious and persuasive. The Congressional Budget Office has estimated that savings resulting from this simple change will be from $400,000 to $600,000 annually. Under this bill, the district court will, of course, retain its discretion to use registered or certified mail or personal service in appropriate circumstances, for instance, before any sanctions are sought against noncomplying recipients of summonses.

### COVERAGE TO ALL FEDERAL EMPLOYEES

Finally, section 3 of the bill would extend Federal employees' workmen's compensation coverage to all Federal jurors. At present, coverage extends only to jurors who are already Federal employees. Jury duty is, of course, a very important service to the Federal Government, and it is desirable to assure that it will not result in excessive financial burdens. Providing this additional protection against loss due to injury while on jury duty, however unlikely and infrequent such injury may be, is an inexpensive and fair measure. Moreoever, it does seem incongruous to us that the current law does not provide this protection to private citizens serving as jurors when the protection is accorded Federal employees serving as jurors as well as "individuals rendering personal service to the United States" similar to the service of a civil officer or employee of the United States without pay or for nominal pay.

In sum, the Department of Justice finds the proposals of S. 2863 to be sensible and beneficial, and we support all of these reforms.

I greatly appreciate, Senator, the opportunity to express our support for this legislation, and I would be happy to answer any questions you might have.

Senator GRASSLEY. Well, Mr. Finn, I want to thank you for your testimony and also thank the administration and your Department for the legislation. I have a couple of questions that I would like to ask as an extension of some things not covered in your statement. Do you see any problem in placing all Federal jurors within the protection of the Federal Employees Compensation Act by foreseeing any inordinate opportunities for abuse, or any duplicating coverage?

Mr. FINN. That is a question we have not studied, but we are not seriously concerned with that problem, no.

Senator GRASSLEY. Our bill as drafted does not provide injury compensation to jurors for injuries sustained when traveling to the courthouse from their homes. What is the view of the Justice Department as to whether this coverage should be provided or not?

Mr. FINN. Well, again, that is a question we have not thoroughly researched. I do know that the Federal Employees Compensation Act currently covers injuries that are sustained while in the performance of duty. It is not the law currently that mere travel to and from a place of work, a Federal place of work, is in every instance considered to be conduct in the performance of duty such that any injuries incurred would be compensable. I believe there are some cases indicating that if you are considered to be in the zone of special danger incident to employment, or if you are on the premises traveling to and from work, then perhaps you might be covered by the Federal Employees Compensation Act. I have not researched to see whether there are any contrary administrative constructions of this issue by the Department of Labor, but since the normal rule is that simply traveling to and from work is not compensable, I really see no reason to treat jurors any differently. I understand that in the House, the bill did say that any injuries sustained traveling to or from work would be compensable under the Federal Employees Compensation Act, and I think that that kind of rule clearly sweeps too broadly. The purpose here, I think, is to treat jurors the same as any other Federal employees. Therefore, I would favor your version, which does not include that particular provision.

Moreover, I would suggest that the rule that injuries incurred during normal travel to and from work, the rule that such injuries are not compensable, is probably a good one, since the Federal Employees Compensation Act is meant to cover injuries incurred in performing Federal duties and is not general auto accident insurance. So I would, in sum, favor your version.

Senator GRASSLEY. Well, I have no further questions. I want to thank you again not only for your testimony, but also, additionally for the study you have given to this subject and the help you have given to the committee, as well as to my staff.

Thank you very much.

Mr. FINN. Thank you, Senator.

[The prepared statement of Mr. Finn follows:]

PREPARED STATEMENT OF TIMOTHY J. FINN

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before the Subcommittee on Agency Administration to discuss the views of the Department of Justice on S. 2863.

S. 2863 would amend several U.S. Code provisions relating to federal jury service by: (1) allowing the court to tax defendant employers fees and costs incurred by the government for court-appointed attorneys representing jurors who prevail in suits to protect their employment rights; (2) authorizing service of jury summonses by regular first class mail; and (3) extending Federal Employees' Compensation Act coverage to jurors. These proposals were initially submitted to Congress by the Administrative Office of the Untied States Courts on behalf of the Judicial Conference of the United States. 1/

The Administration has previously stated its support for these proposals in testimony on the substantially identical bill in the House of Representatives, H.R. 4395. 2/

The three changes proposed by the bill are intended to encourage jury service, make it more fair, and improve the efficiency of court administration. These purposes are obviously

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1/ Letter of May 20, 1981, from William E. Foley to Honorable Thomas P. O'Neill.

2/ Statement of Deputy Assistant Attorney General Timothy J. Finn concerning H.R. 2406, H.R. 4396, and H.R. 4395 before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary of the United States House of Representatives (June 22, 1982).

important, and the bill's provisions seem reasonable means to those ends. We have reviewed the rationale advanced by the Judicial Conference in recommending passage of this bill, and we find it persuasive. The Judicial Conference has, of course, particular expertise in this area and has made what appears to be a thorough study of the need for these changes.

A. Taxation of Juror Attorney's Fees Against Employers

Section One of the bill would allow the court to tax a defendant employer the attorney fees incurred by the government for a court-appointed attorney representing a juror who prevails in an action against an employer under Section 1875 of Title 28 of the United States Code. Section 1875 provides a federal cause of action in favor of an employee whose employment rights are infringed by his employer as a result of the employee's jury service. It is already provided by Section 1875 that (1) such an employee may have a court-appointed attorney, to be paid out of government funds (28 U.S.C. § 1875(d)); and (2) a court may award a prevailing employee who retains his own counsel reasonable attorney's fees against a defendant employer (28 U.S.C. § 1875(d)(2)).

Section One of S. 2863 would provide that the attorneys fees for a prevailing employee with a court-appointed attorney may also be taxed against the defendant employer by the court. It is certainly incongruous that an attorney paid directly by a prevailing employee may have his fees reimbursed by the defendant employer, when in an identical case with a court-appointed attorney, the government is left paying the fees. The proposed revision would increase the incentive of private employers to protect the employment rights of jurors and would shift the financial burden of litigation from the government to an offending employer in appropriate cases.

B. Service of Jury Summonses

Section Two of the bill would allow district courts the option of serving jury summonses by regular first class mail; under current law they are limited to personal service and registered or certified mail.

The efficiency and cost arguments advanced by the Judicial Conference in favor of this proposal are obvious and persuasive. The Congressional Budget Office estimates that savings resulting from this simple change will be from $400,000 to $600,000 annually. 3/

Under this bill, the district courts will, of course, retain their discretion to use registered or certified mail or personal service in appropriate circumstances. Thus, we would expect that service by first-class mail would typically be followed by the more formal, better-documented means of summons service before any sanctions are sought against non-complying recipients. We can see, however, no reason to require more formal or expensive service for the great majority of routine jury summonses.

C. Compensation for Injury to Jurors

Section Three of the bill would extend federal employees workmen's compensation coverage to all federal petit and grand jurors. At present, coverage extends only to jurors who are already federal employees. Jury duty is an important service to the federal government, and it is, of course, desirable to assure that it will not result in excessive financial burdens. Providing this protection against loss due to injury while on jury duty -- however unlikely and infrequent such injury may be -- is an inex-

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3/ H.R. Rep. 97-824, 97th Cong., 2d Sess. 26 (1982).

pensive and fair measure. Moreover, it seems incongruous that the current law does not provide this protection to private citizens serving as jurors when the protection is accorded to federal employees serving as jurors (5 U.S.C. §§ 8101(1)(A), 8101(1)(F)) and to "individual[s] rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay" (5 U.S.C. § 8101(1)(B)).

In sum, the Department of Justice finds the proposals of S. 2863 to be sensible and beneficial. We support all of these reforms.

I greatly appreciate the opportunity to express our support for this legislation.

Senator GRASSLEY. I will call the next group: Judge Clarie, Judge Lord, and also Mr. Burchill.

Judge CLARIE. Would you prefer, Senator, that I stand?

Senator GRASSLEY. Well, most everybody sits, because I think it is more comfortable, but you can do whatever you are comfortable with.

Judge LORD. Why don't you have him do whatever he makes them do in his court?

Judge CLARIE. Well, when I am in Washington, I want to do what everybody else does.

Senator GRASSLEY. Well, I have great respect for judges, and I am going to let them make their own determination, as long as it is within the rules of the Senate.

I have already introduced you, so I will not go back through that, but I will ask you to proceed as you three felt that it would fit in best to your testimony, in the order that you would like.

**STATEMENT OF JUDGE T. EMMET CLARIE, CHAIRMAN, COMMITTEE ON THE OPERATION OF THE JURY SYSTEM, AND CHIEF JUDGE, U.S. DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT; CHIEF JUDGE MILES LORD, U.S. DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, ACCOMPANIED BY WILLIAM R. BURCHILL, JR., DEPUTY GENERAL COUNSEL, ADMINISTRATIVE OFFICE OF THE U.S. COURTS**

Judge CLARIE. Very well. Thank you, Senator. As a representative of the Judicial Conference, I am very pleased to have the opportunity of being here to speak to you and through you to the

members of your committee. As you know, this bill comprises three distinct proposals with respect to jury selection and service in the U.S. District Courts.

First, it would extend the coverage of the Federal Employees' Compensation Act to all Federal jurors, providing compensation to them for any physical injury which might be sustained in the scope of their jury service. Second, it would amend the statute regulating Federal jury selection to permit summonses for jury service to be served upon the prospective jurors by ordinary first class mail at the election of the district court, in addition to the existing alternative method of personal service and service by registered or certified mail.

And finally, the bill would make a technical amendment to the statute protecting the employment of Federal jurors, 28 U.S.C. 1875, to expressly authorize the taxing of an attorney's fees on behalf of an aggrieved juror against an employer who has violated the duty imposed by section 1875, when such fees have been advanced by the United States.

### S. 2863 STRONGLY SUPPORTED

In summary, the Judicial Conference strongly supports S. 2863 in all of its facets. Indeed each of the proposals now embodied in S. 2863 has been endorsed on several occasions by the Conference upon the recommendation of its Committee on the Operation of the Jury System, on which I have been a member since 1976 and now serve as chairman by appointment of the Chief Justice of the United States. In particular, the Conference has long been concerned with the situation of jurors who incur physical injury while serving in the Federal courts, and it adopted its initial resolution on this subject in 1974, urging the enactment of legislation very similar to the present section 3 of S. 2863. I should add that the U.S. Senate subsequently passed this measure as a part of S. 2074 in April 1978, but this aspect of S. 2074 failed of enactment in the House of Representatives. Recently, however, the House Judiciary Committee favorably reported H.R. 6872, of which title II contains this and other features of S. 2863 in a very similar form.

At this time, I would like to address in more detail each of the three distinct sections of S. 2863, and I shall then be pleased to attempt to respond to any questions of the subcommittee.

The first section of S. 2863 would make a technical amendment to 28 U.S.C. 1875(d), as enacted by section 6 of the Jury System Improvements Act of 1978. Section 1875 prohibits an employer from discharging, threatening to discharge, intimidating, or coercing any permanent employee as a result of the employee's Federal jury service or the prospect of being called for such service. This section also provides a legal remedy to a juror who has been so aggrieved by his employer, and subsection (d) thereof makes available a court-appointed attorney at the expense of the Government to a juror demonstrating to the court such a claim having "probable merit."

Subsection (d)(2) of section 1875 now authorizes the award of attorney's fees as part of the costs to an employee prevailing against his employer in such a lawsuit brought by retained counsel. How-

ever, the existing language of this subsection leaves a gap in the law as to the taxation of attorney's fees where the court appointed, and the Government paid, counsel for the employee-juror. This bill would add to section 1875(d)(2) a sentence empowering the court to tax, as costs payable to the court, the attorney fees and expenses incurred by the United States on behalf of a juror for whom the court has appointed counsel. This authority to tax attorney's fees under these circumstances is appropriate in order to reimburse the United States for appropriated funds advanced on behalf of a juror to redress the misconduct of his or her employer in respect to interference with the performance of Federal jury duty.

SERVICE OF JURY SUMMONS

The second phase is service of jury summonses. The second section of this bill is also in the nature of a technical amendment to the Jury Act at 28 U.S.C. 1866(b) to authorize the service of summonses to prospective jurors by ordinary first class mail, as well as by personal service and by registered or certified mail, at the discretion of the court. Section 1866(b) now requires the service of jury summonses to be made personally or by registered or certified mail. In practice, personal service is rarely employed, and the district courts rely almost exclusively upon service by mail in the case of these summonses.

The employment of registered or certified mail for this purpose has the advantage of memorializing the receipt of the summons by a juror, which is important in the event that voluntary compliance with the summons is not forthcoming and the court must issue a "show cause" order to the prospective juror or invoke the punitive provisions of 28 U.S.C. 1866(g) for noncompliance. Fortunately, the great preponderance of citizens summoned for jury service comply voluntarily and appear as instructed. Thus, a record of the receipt of the summons is not usually necessary.

On the other hand, the existing requirement of certified or registered mail is disadvantageous to efficient court administration in that it necessitates added effort by clerks' offices to prepare summonses for service and to keep track of their return. Further, the receipt of a certified or registered mail notice is alarming to many prospective jurors, some of whom may try to avoid delivery of the summons out of apprehension. Thus, the use of certified or registered mail may sometimes actually impede the effective delivery of the jury summonses and reduce the level of voluntary compliance by prospective jurors with the summons to appear in court.

S. 2863 would not interfere with the discretion of a district court to continue to utilize certified or registered mail to serve its jurors with summonses where local conditions or special circumstances concerning a particular juror suggest this procedure. It would afford to the district courts the additional alternative of employing regular mail for this purpose when appropriate, thereby effecting a savings to the Government in personnel man-hours and postal costs and also, perhaps, expediting the delivery of summonses for Federal jury duty. In recent months, several of our circuit judicial councils and circuit executives have estimated the potential monetary savings to the Government from the adoption of this measure, and

their findings in this respect have been furnished to the subcommittee staff.

TO EXTEND ACT COVERAGE

The next phase is Federal Employees' Compensation Act coverage. The purpose of section 3 of this bill is to extend to all Federal jurors the coverage of chapter 81 of title V, United States Code, popularly known as the Federal Employees' Compensation Act. Chapter 81 contains the statutory mechanism to compensate employees of the Federal Government for medical expenses and disability or death incident to personal injury sustained while engaged in the performance of official duty. S. 2863 would provide this same financial protection to citizens injured in the course of serving on a jury in Federal court. As indicated, the Judicial Conference originally urged such legislative action in March 1974 and has renewed that endorsement on several subsequent occasions.

While the incidence of physical injury to jurors within the scope of their jury service has fortunately been quite rare, the position of the Judicial Conference in this matter is premised on the view that the United States has a basic obligation to reimburse its citizens who respond to the summons of a Federal district court and are injured in the course of jury duty. Jurors render a high public service in effectuating the constitutional guarantees of the sixth and seventh amendments that there shall be the right to a trial by jury in criminal and civil actions, as well as the fifth amendment right to indictment prior to prosecution on felony charges.

As you know, Federal jurors are not in any sense volunteers or seekers of such service. Instead, they are selected at random from voter lists by the terms of the Jury Selection and Service Act of 1968 as amended, and they appear in response to judicial summons at the risk of being found in criminal contempt for willful failure to comply.

This act further provides at 28 U.S.C. 1861;

> It is * * * the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

Given the compulsory nature of jury duty and its high importance to our legal system, we submit that the Government should in fairness compensate jurors for any personal injury incident to that service.

At present, a juror who incurs physical injury has no recourse to obtain reimbursement for consequential expenses unless he or she can demonstrate negligent or wrongful conduct of a Government agent as the proximate cause thereof and thus proceed against the United States under the Federal Tort Claims Act. 28 U.S.C. 2671 et seq. The requisite proof to meet this standard can be an impossible burden in those many instances where accidental injury is not readily attributable to any identifiable cause, but occurs in circumstances where the Federal Government, and virtually any private employer, would readily and voluntarily compensate its employee injured in the same manner without requiring any prerequisite legal showing.

CATCH-22 SITUATION

What sort of injuries are Federal jurors likely to incur in the course of their service, and how frequent is such injury? In responding to these questions, we find ourselves in a kind of catch-22 situation, in that the absence of any finanical remedy for most physical injuries to jurors in the past has greatly impeded the reporting and recording of such incidents. In recent years, the Administrative Office of the United States Courts has been attempting to chronical these episodes and has asked the clerks of the district courts to report instances of juror injury in their courts. The Administrative Office has supplied to your staff what documentation we have been able to obtain on this subject.

In brief, we have reports of perhaps 35 personal injuries to Federal jurors over a period of several years. Most of these incidents appear to involve falls in the courtroom, jury room, and adjoining areas of the courthouse. There are also the inevitable instances of heart attacks and other sudden illnesses occurring during periods of jury service. In the latter situations, of course, the financial liability of the United States should and would, under this bill, be limited to providing emergency first aid measures and transportation to the nearest hospital, since the illness presumably results from a preexisting medical condition and would not be related to the performance of jury duty as a legal cause.

Finally, it should be recognized that jurors must sometimes be sequestered on an around-the-clock basis during trial, or more commonly, during deliberations. In addition, it is essential in the course of certain trials to transport the jury to take a first-hand view of immovable physical evidence, such as an accident scene or parcel of land being condemned. Both of these occurrences may subject jurors to an enhanced risk of bodily injury in the event of a mishap.

The equitable considerations which we find to support this aspect of S. 2863 are buttressed by the fact that, under existing law, regular Federal employees who happen to be serving on jury duty in the U.S. district courts continue to be covered by the Federal Employees' Compensation Act during the term of jury service in the same manner as they are protected in the scope of their ordinary employment. Such provision was made by amendment to the Compensation Act in 1974, adding 5 U.S.C. 8101(1)(F) (Act of September 7, 1974, Public Law 93-416, 1, 88 Stat. 1143). Those citizens serving on Federal juries who happen to be private sector workers—if they should be injured in the course of that service—should, in fairness, be accorded the same financial protection as is possessed by the Federal employee who may sit beside them in the jury box.

In further reference to this 1974 amendment, I should add that the Senate Labor and Public Welfare Committee, in its report on the bill which ultimately became Public Law 93-416, evidenced agreement with the position of the Judicial Conference that similar financial protection in the event of injury should be made available to all Federal jurors. I should like to quote the following language from the Senate report which speaks to this point, and I quote:

Furthermore, the Committee recognizes, and concurs with, the resolution of the Judicial Conference of the United States, adopted March 1974, which calls for the

coverage of all persons serving as Federal jurors. The Committee would urge that such action be considered in conjunction with the matter of Federal juror compensation now being studied by the Senate Judiciary Committee. (S. Rept. No. 93-1081, 93 Cong., 2d sess.) reprinted in the 1974, "U.S. Code Congressional and Administrative News," at page 5347.

I want to emphasize that section 3 of S. 2863 would not accord to jurors the status of Federal employees for any other purpose than to bring them within the statutory scheme of chapter 81 of title V relating to compensation for injury. The Department of Labor, which is charged with the administration of the Federal Employees' Compensation Act provisions, has in the past consistently rejected administrative claims for injury compensation by jurors who were not regularly employed by the Federal Government. This bill would alter that administrative construction.

Unlike previous versions of this legislation which would have directly amended title V of the United States Code, S. 2863 would accomplish its objective by adding a new section 1877 to chapter 121 of title 28, United States Code, referring to chapter 81 of title V and making it applicable to jurors selected and serving under chapter 121. This new section would also set forth certain definitions ciritical to effecting its purpose. In particular, it would define the performance of duty by jurors to include (1) their attendance at court pursuant to summon; (2) periods of jury deliberation; (3) periods of sequestration by judicial order; and (4) their presence by order of the court at a site for the taking of a view.

Section 4 of this bill would strike from 5 U.S.C. 8101(1) the above-described language in subparagraph (F) with respect to Federal employees serving as jurors and would amend this subparagraph to refer simply to all Federal jurors.

Mr. Chairman, on behalf of the Judicial Conference, I thank you for the courtesies extended to the Conference and to me, and, if there are any questions, I shall attempt to answer them.

Senator GRASSLEY. Before I hear from Judge Lord, I would like to address the same question I asked earlier in regard to providing injury compensation to jurors for their travel to and from the courthouse; does the Judicial Conference have a view on that?

Judge CLARIE. Yes. In respect to that, we were well aware that ordinary employees in private industry do not regard compensation as applicable until the person arrives at his place of employment. However, in respect to Federal jurors, we must be mindful of the fact that they were summoned from their home. First, they are paid mileage from their homes to the courthouse. Actually, in a sense, their duty starts when they leave home for the Federal courthouse. Ordinary Federal employees do not receive mileage from their homes to the courthouse, but jurors do, and they come under compulsion. I think that is one of the factors which has to be considered.

Second, when the Jury Committee of the Judicial Conderence was discussing this matter, Judge Bratton from New Mexico was vitally interested in it and then Judge Enright from San Diego, who had sat up in Alaska, said:

Well, you know, one of the greatest potential hazards of these people in Alaska is that they come long distances; some come by dogsled, some come by airplane, and their airplanes are not in too good condition—they are sort of brush-hoppers, so to

speak—and actually, they run great risks in answering that summons and coming to the courthouse.

And the Jury Committee felt very strongly about the fact that, since jurors are summoned from their homes and are being paid from the time they leave home, they should be within the purview of the law.

Third, the Administrative Office advises me that where a Federal employee is a Federal juror and is injured between his home and the courthouse, the Labor Department, in the few cases that have occurred, so construes him to be on duty as a Federal juror, so why shouldn't it naturally follow that the man who is not a Federal employee should be treated likewise.

Senator GRASSLEY. We are going to hear testimony later which points out that the awarding of attorney's fees and expenses may include payments for travel, telephone, other expenses, and suggests we further define what expenses are taxable. Do you think that that definition is necessary or advisable in this legislation?

Judge CLARIE. I personally do not think it is necessary, Senator, for this reason. In fact, I had one of my first cases, after 22 years in the court—no, not 22, 21; I am starting my 22d this September—we had one case just like this about 3 months ago where a juror was fired after he had completed his jury services. Had he been fired while the jury was in session and so disrupted him and the court, there might have been a reason for citing his employer in for contempt, but this occurred immediately following when he went back to work. And he asked for the appointment of an attorney, and the court appointed him an attorney under the Criminal Justice Act—a capable, young attorney—and he brought suit, and then he had to get a deposition of the parties, and that was going to cost about $150 for a stenographer, and so much per page for a transcript, and that was allowed. And then, lo and behold, before the time came to be heard in court, both parties agreed on a settlement. But the attorney had to be paid out of Federal funds, and there was the $150 deposition, and there was about $500 or $600 in attorney's fees that had accumulated, out of Federal funds under the Criminal Justice Act.

Now, under this bill, that man, the employer, should have been taxed for that. He was the one who caused this whole problem, so that the Government had to pick up the bill because there was no provision under the law. Now, if this same man had retained his own attorney, then in the settlement or otherwise, if it came to court, the court had the authority to tax the cost of the attorney's fees—reasonable attorney's fees—and the cost of the deposition against the employer, provided it was found that he was wrong in his conduct, in his act.

Senator GRASSLEY. Thank you very much. One last question. You mentioned that a majority of prospective jurors do comply voluntarily with summonses under the present method of delivery. If the regular mail option is implemented, do you foresee that high rate of compliance continuing, or if not, what recourse is available?

Judge CLARIE. I do not think it is going to provide any appreciable difference, Senator, for this reason. Especially among minority groups and some of the less-educated groups, who shy away from registered mail from official sources, they will not pick up their

registered mail, because they know, or they think it is trouble of some kind. So if they get a letter in the ordinary course of events, and it is a summons, and they open it and read it, they are ordinarily going to comply. If they do not comply, they will be treated like anyone else; they would be contacted further, either by registered mail, or the marshal would serve them personally and tell them, "Look, you had better show up down there, or else you are going to have problems," and most people conform.

Senator GRASSLEY. Thank you very much, Judge Clarie.

Judge Lord, you have had extensive experience in the courtroom and with the direction of jurors. Can you tell us a little about why you believe there is a need for this legislation and what experience you have had with juror injuries?

Judge LORD. Senator, as you perhaps know, I did not start this as a part of the regular judicial machinery. I had an occasion where someone was hurt and wrote to the committee, and here I am, now incorporated by the Judicial Conference, and that is perfectly appropriate. But I do not have all of the background that they have. I have my own experience only to rely on.

PERTINENT ANECDOTE

Just a little anecdote as to how this can happen maybe will tell you more than a lot of statistics. The railroad is required to furnish a safe place in which its employees are to work. I had a man who was injured on top of a big ore dock where they ship taconite pellets; they are all round, like little marbles, and just as hard. We had to go up and look at the place where the man had fallen off the train. There was a dispute as to where the train had gone, what its movements had been, and so forth.

So I took the jury up there, and I was not in a position where I could caution them very much. If I said, "Look out for these taconite pellets, they are very dangerous," I would have characterized the workplace and it probably would have been a prejudicial remark. So I took them up there, and we walked over the place, and when we got through, somebody said, "One lady is hurt." I did not even see her, but she had stepped on these taconite pellets on top of a railroad tie, and taken a pratfall. She was an older lady, about 74, and had injured her hand and her bottom and her leg and so forth. So we took good care of her, but on inquiry as to whether or not we could pay the doctor bills and so forth, we found there was no such thing as workmen's compensation for her, or any kind of coverage. And that alarmed me, not just because of her alone, but because of the terrible position we put people in. I have taken people out at night into railroad yards, to check the light condition. And that is a command performance. They cannot even back out—like an ordinary workman who has a union contract that says he does not have to go into a dangerous place. Well, any judge with good sense would not take them into a very dangerous place, but for some people, the same one place is more dangerous than it is to another. A big, fat, heavy juror is in a real trouble spot compared to a younger person, and yet, you cannot select the jury to keep the older people off, so they get put in positions where they should not be.

I have gone up into the Boundary Waters canoe area with some jurors who had heart problems, and we tried to accommodate the viewing of this land that we were condemning by being especially careful of those people—which brings me to another point. In the prepared remarks, Judge Clarie has stated that heart attacks and things of that kind would not be covered. I think it is very dangerous to have this in the legislative history, because more and more, they are awarding damages for stress-related injuries; if somebody took that remark and said a juror who is put under a terrible stress, or has to walk up a hill on a view, or something like that, and has a heart attack, he could not recover. If we just left that part alone, or by these remarks perhaps even help to straighten out the legislative history, it is not contemplated that all stress-related injuries be excluded, but only traumatic injuries. We intend to go by the usual rules that apply to people who are hurt on the job. And people with heart attacks, if it can be attributed to the job, are sometimes compensated; others are chargeable to natural causes.

I could go on with a litany of the things that I have seen and the fears that I have had about jurors getting hurt. When they first get their summons, as was mentioned in Judge Clarie's testimony, they are scared, they are excited. You, perhaps yourself, Senator Grassley, have had the experience of going to a small town on a campaign and get a local volunteer driver. And you are not well advised to do that, because if he gets a Senator in the car, he will go right through the stoplight; I have ridden with them. And they get excited. It is a special mission they are on, you see, and caution is abandoned.

And this happens to jurors. They get that piece of paper. They are excited. Mama is on the farm, and she says, "Dad, you gotta drive me," and Dad gets in the car, and they head for the big city, and they have never, or seldom, been there, and then to find a courthouse instead of Dayton's department store, or something like that, that is a real problem. And honestly, I have seen them go down the street, and I can spot them. I can see them coming. "Just a minute. Where are you going?" That is, the farmer that comes into town. You have seen them.

Well, the jurors are that way. It is a panic. They are much more accident-prone when they are in that condition. And I am addressing my remarks now to whether or not they should be compensated from portal to portal, from the home back.

There is another thing that distinguishes them from the ordinary Federal worker and that is that, with the Federal worker, it is up to him where he lives, and it is up to him where he takes the job. He can move close to the job, he can commute. You get a pattern of travel. He is calm, collected. He can join a carpool. Jurors are, in many instances, discouraged from joining carpools. They are supposed to remain by themselves. They have that problem of coming downtown, after arriving in the city, to stay at a hotel. Now I think we can bring them in from all over the State into one central location. There was a provision before that certain mileage precluded them—that is gone now, isn't it?

Mr. BURCHILL. Yes. It would depend on the jury selection plan that the particular district court has, but if the jury selection plan

is districtwide, there is no restriction on their being summoned and their being reimbursed for travel expenses from anywhere within the judicial district, which in Judge Lord's district is the entire State of Minnesota.

Judge LORD. To add to that, when they get to the courthouse, after having had all their troubles that they have, they find their way to the courtroom, and they are herded, in a way like cattle—no matter how gentle you are, when you are trying to move 12 or 15 or 20 people at a time, a certain mob psychology sets in. They will walk right out of the jury box and step into thin air. I have had half a dozen of them fall, even though I am particularly conscious of that and warn them at all times. We have had to paint our steps several different colors, and sometimes I put up a little gate and make them open the gate. But they are liable to get hurt, and falls are the worst part of it.

Senator GRASSLEY. Do you have anything else?

Judge LORD. No, I am about wound up on that. I will talk on any given subject, if you ask me, though. If you want to ask me those questions, I am ready.

The question of the jury fee costs, whether they should put telephone and that in, if you just say "costs," period, the courts have construed that a thousand times, and you fall into a familiar bracket. Lawyers do not necessarily list all phone calls and itemize everything. They may just raise the fee a little bit and wrap it all in one package.

Senator GRASSLEY. Do you have anything you want to add?

Mr. BURCHILL. No, thank you, Senator Grassley. That concludes our statement.

Senator GRASSLEY. OK. I want to thank all of you from the Judicial Conference. Thank you very much for your participation.

Senator GRASSLEY. I will call our next witness now.

Please proceed, Mr. Hoffman.

**STATEMENT OF HERBERT E. HOFFMAN, SPECIAL COMMITTEE ON COORDINATION OF FEDERAL JUDICIAL IMPROVEMENTS, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY ROBERT TORRESEN, LAW STUDENT INTERN, WASHINGTON OFFICE**

Mr. HOFFMAN. Thank you, Mr. Chairman.

As you indicated, I am the immediate past director of the Washington office of the American Bar Association, having held that job for a little over 7 years. Prior to that, I was a counsel on the House Judiciary staff for 3 years, and in the Department of Justice from 1948 to 1971. In all of those experiences, my work has really focused on courts, the administration of justice, the activities of lawyers and judges. It is with that background that I am pleased to be able to appear before you in support of this legislation as a representative of the American Bar Association.

The association, as you know, is the largest professional association in the world, having among its members 300,000 lawyers and judges from all around the country. This past summer, the association's House of Delegates, 325 members, approximately, from all over the country, endorsed without dissent legislation such as you, Mr. Chairman, have introduced in the Senate.

I am pleased to be accompanied by Robert Torresen, a law student intern in our Washington office who has worked considerably on this subject. The association is greatly indebted to him for his work.

Senator GRASSLEY. Thank you, Mr. Torresen, for your work.

Mr. HOFFMAN. You have indicated that my complete statement will be placed in the record, so I will not read it. Rather, I would make a few observations with respect to each of the sections.

### TAXATION OF ATTORNEY FEES

First, on the taxation of juror attorneys' fees, the prospect of being taxed attorneys' fees serves as a strong deterrent to employer misconduct. Clearly, as a matter of equity, and common sense, an employer who is found to do the acts prohibited should not reimburse the Government for funds it pays for a Government-appointed attorney, just as he would compensate an employee for funds paid to an attorney privately employed.

However, I do think the subcommittee should take a close look at the question of "expenses" incurred on behalf of a prevailing employee. It appears to me that the word "expenses" is so ambiguous as to leave a lot of room for various interpretations. It may be that in the course of time, just as occurred with the Criminal Justice Act, what are or are not compensable expenses will finally be determined.

There is another aspect of the expense question which I think the subcommittee needs to look at, which I do not believe has been touched on by any of the other witnesses, either here or in the House. If I am correct, expenses are not reimbursed for employers who are successful or for employees who are successful with privately retained counsel. It strikes me that all three—the employer, the employee with privately retained counsel, and the employee with court-appointed counsel—should or should not be reimbursed expenses. I am not aware of any rationale for treating any one of these groups, as is done here, differently from the other two groups.

### SERVICE OF JURY SUMMONSES

With respect to the service of jury summonses, the arguments are quite persuasive in support of your legislation. Ordinary mail will reduce costs and it will reduce the burdens on clerical employees of the court system. Many people consider registered or certified mail bad news, and they will not pick up or sign for such mail. Also, registered or certified mail creates a tremendous inconvenience for many of those whom we are going to ask to serve the country on jury duty, because they are at work during the day when the mail is delivered at home, and must make a special trip to the post office to pick up the certified or registered mail. There is no reason to have them do that, particularly when our court system tells us—and I would imagine this certainly is the fact—that most people will respect a jury summons and appear.

I suggest that the committee give consideration to one further change with respect to the service of jury summonses. It seems to me that the statute should be amended to eliminate the use of reg-

istered mail. When the legislation was enacted to create certified mail along with registered mail, it was done so as a way of giving people security with respect to the delivery of mail, at lesser expense.

With return receipts available for certified mail, just as with registered mail, there really is no reason for sending a jury summons by registered mail. As I understand it, registered mail is generally used for matter that has intrinsic value of its own, and certified mail is generally used for documents which have no intrinsic value and are sent through the mail. My suggestion would be that the legislation be amended so that registered mail is no longer an alternative to be used by tbe courts. That would result in a saving of dollars to the Government on those occasions when a person does not respond to the ordinary mail, and a return receipt, secure mail must be used.

COMPENSATION OF INJURED JUROR

With respect to compensation for jurors, section 3 of the bill, there really is no good reason why a private citizen, injured performing his public service, should not be taken care of as is a Government employee who is on jury duty.

The witnesses before me have noted the definition of when a juror is deemed to be in the performance of duty. In the bill which you introduced at the request of the Judicial Conference, travel from home to the courthouse and back is not covered. In H.R. 6872, which is the House legislation to which other witnesses have referred, and which, by the way, passed the House this past Monday, such travel is covered.

I believe it was Judge Clarie who indicated that Federal employees are covered portal to portal under the Compensation Act when performing jury duty. If that is so, I know of no reason why private citizens should not be. If it is not so, it may well be, for the reasons given by the judges who have testified, that a private citizen who is summoned to do jury duty should nevertheless be paid from the time he leaves his home to the time he gets back, if injury occurs which is related to his travel for the purpose of doing jury duty.

Many of these people perform jury duty at considerable sacrifice. For example, persons who have retail shops, with no employees must close their shops in order to go to perform jury duty; they certainly do not get reimbursed adequately for that.

I have nothing further to add to my prepared statement, but I would be pleased to respond to any questions you may have.

Senator GRASSLEY. I had a couple of questions I was going to ask you, but they are already answered by your testimony and by what you have just said. So, thank you very much for your testimony. The two questions, as I have indicated, that I was going to ask you, you have already answered.

I want to thank not only you, but all of you, once again for your testimony. Hopefully, we will be able to move this bill yet this year, particularly considering the fact that it looks like we are going to have a lame duck session now, and so even though it is late in the session, your testimony is a very important part of expediting this legislation.

[The prepared statement of Mr. Hoffman follows:]

## PREPARED STATEMENT OF HERBERT E. HOFFMAN

Mr. Chairman and Members of the Subcommittee:

I am Herbert E. Hoffman, former Director of the Washington Office of the American Bar Association and current member of the ABA's Special Committee on the Coordination of Federal Judicial Improvements. I appear before you to present the views of the Association on S.2863, a bill to amend existing laws relating to the performance of federal jury duty in United States district courts. Each of the bill's three provisions was endorsed by the ABA House of Delegates at its most recent Annual Meeting.

### TAXATION OF JUROR ATTORNEYS' FEES

Under present law, an employee is protected from discharge, threat of discharge, intimidation, and coercion by an employer by reason of such employee's service as a grand or petit juror in federal court. Section 1875 of Title 28 of the U.S. Code provides that a juror who has been so aggrieved may bring an action against his employer for damages, injunctive relief, and a civil penalty, and that the court may appoint a government-compensated attorney upon a finding of probable merit in an employee's claim.

Subsection (d)(2) of Section 1875 further provides that when an employee has retained his own counsel, the court may award a reasonable attorney's fee as part of the costs to an employee who ultimately prevails. The subsection also provides that the court may award a prevailing employer a reasonable attorney's fee as part of the costs if the action is found to have been frivolous, vexatious, or brought in bad faith.

Subsection (d)(2) does not explicitly provide, however, for the taxation of an attorney's fee against an employer in a situation where a juror's counsel has been appointed by the

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court and compensated from government funds. S.2863 would amend §1875(d)(2) expressly to authorize the court to tax a defendant employer, as costs payable to the court, the attorney's fees and expenses incurred on behalf of a prevailing employee for whom the court has appointed counsel.

Because the prospect of being taxed attorneys' fees serves as a strong deterrent to employer misconduct, such taxation should be allowed regardless of whether an individual has retained counsel at his own expense or has been assisted by a court-appointed attorney compensated by the government. Additionally, as a matter of equity, there is as much reason to reimburse the government for funds spent to protect a juror's employment rights as there is to allow a private citizen to recover such costs. The American Bar Association therefore supports the enactment of legislation to provide for the taxing of attorneys' fees as court costs for a court-appointed attorney in an action brought by a juror to protect his employment rights.

I would urge the Subcommittee to examine carefully, however, the language in S.2863 providing for the taxing of "expenses incurred on behalf of a prevailing employee." I understand that this language is modeled after the Criminal Justice Act, under which courts have allowed payment for investigative, expert witness, telephone, travel, xeroxing and other expenses "reasonably incurred." Further definition or guidelines with respect to which expenses are taxable may be needed.

SERVICE OF JURY SUMMONSES

Section 2 of S.2863 would amend existing law with respect to the manner of serving summonses upon prospective jurors, summoning them to court for jury service. 28 U.S.C. §1866(b) presently requires that these jury summonses be served either personally or by registered or certified mail. In practice, such summonses are now served nearly always by registered or certified mail rather than personally. S.2863 would authorize

the service of such summonses by regular, first-class mail as well as by the methods of service presently authorized.

The service of jury summonses by ordinary mail would significantly reduce mailing costs. Congressional Budget Office Director Alice Rivlin has recently estimated postage savings of between $400,000 and $600,000 per year as a result of this provision. The clerical burden associated with preparing summonses for service also would be lessened. In addition, the delivery rate of such summonses would probably be improved, as some persons associate all registered or certified mail with bad news, and therefore refuse to sign or call for a registered or certified letter. Finally, the use of ordinary mail would prove to be more convenient to many persons being summoned. Many prospective jurors work during the day and therefore must make a special trip to the post office to retrieve certified or registered mail.

S.2863 would preserve the discretion of the courts to continue to require service of such summonses personally or by registered or certified mail, as at present. Those courts that face a substantial problem in achieving voluntary compliance with the summonses by prospective jurors may wish to adhere to the present practice in order to have proof of the summons delivery in the event the prospective juror is ordered to show cause for failure to appear. I would suggest that the Subcommittee also give consideration to eliminating altogether the use of registered mail to serve jury summonses. Given the availability of return receipts with certified mail and the fact that summonses have no intrinsic value of their own, such as materials generally sent by registered mail, additional savings would be realized by eliminating the use of the more costly registered letter.

The ABA supports enactment of legislation to authorize the service of jury summonses by ordinary mail as an important and needed step toward improving the efficiency of jury selection.

INJURY COMPENSATION FOR JURORS

Section 3 of S.2863 would extend the coverage of the Federal Employees' Compensation Act (FECA) to all federal jurors. The Act presently provides compensation to employees of the federal government for medical expenses and disability or death resulting from personal injury sustained while in the performance of official duty.

The FECA covers federal employees who are injured while serving on federal juries and "individual[s] rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay" (5 U.S.C. §8101(1)(B)). I understand that in administering this Act, however, the Department of Labor has taken the view that private citizens serving as federal jurors are not within the scope of this language. Under present law, therefore, a private person injured while serving as a juror cannot recover compensation unless he can bring his case under the Federal Tort Claims Act and satisfy the difficult burden of proving negligence on the part of the government or its agent.

Federal jurors are not frequently injured in the course of their service. The Administrative Office of the U.S. Courts has reports of approximately 35 such injuries over a period of several years. Based on the records of the Administrative Office, CBO Director Rivlin has estimated increased costs from juror-related injuries to be less than $100,000 per year.

Section 3 of S.2863 also defines when a juror is deemed to be in the performance of duty, ensuring that claims for compensation shall not be granted except for strictly duty-related injuries. The bill requires that the protected juror be in attendance at court pursuant to a summons, in deliberation, sequestered by order of a judge, or at a site for the taking of a view. In similar legislation now pending in the House (H.R. 6872) and in the executive communication submitted by the Administrative Office of the U.S. Courts, a juror's travel

from home to the courthouse and back would also be considered duty-related. I urge the Subcommittee to give consideration to whether or not such travel should also be included in the definition of the performance of duty.

Strong policy reasons exist for bringing all federal jurors within the coverage of the Federal Employees' Compensation Act. Jurors provide a valuable service to the government. While in actual service as a petit or grand juror, the citizen juror should rationally be accorded the benefit of protection in case of a job-related injury. What begins as a fulfillment of a high duty of citizenship through public service to the government could be turned into an economic catastrophe for the juror, in the event of an accident or injury while serving.

Equitable considerations also lend support to the approach of S.2863. It is unfair that a federal employee serving as a juror receive compensation for duty-related injuries while a private citizen serving in the same capacity does not. Both should be accorded the same financial protection and compensated in the same manner.

Mr. Chairman, the American Bar Association strongly supports the prompt enactment of legislation such as S.2863. Thank you for your time.

Senator GRASSLEY. Thank you all very much, and the hearing is adjourned.

[Whereupon, at 11:07 a.m., the subcommittee was adjourned.]

# APPENDIX

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## LETTERS

### MAIL SAVINGS ESTIMATE

OFFICE OF THE CIRCUIT EXECUTIVE

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

P O BOX 42068

SAN FRANCISCO, CALIFORNIA 94142

February 12, 1982

William James Weller
Legislative Affairs Officer
Administrative Office of the
United States Courts
Washington, D. C. 20544

Dear Bill:

At the January 26, 1982 meeting of the Circuit Council, the subject of the use of certified mail for summoning jurors was discussed. Pending in the House is H.R. 4395, which would permit the courts to use regular mails, the practice now in effect in most state jurisdictions.

The Council expressed its support for H.R. 4395 as a means of reducing costs of operating the jury system and improving jury utilization. Attached please find the projected fiscal impact statement on the district courts in the Ninth Circuit. The amount is small, but when combined with the other ten circuits it represents several hundred thousand dollars of savings.

We would appreciate your transmitting this recommendation to Congress. If you require more information please call us.

Sincerely,

Bill

William E. Davis
Circuit Executive

WED-tb
Enclosure
Copies to: Chief Judge Browning;
Chief Judges of District Courts

COST COMPARISON
ON USING CERTIFIED MAIL
VERSUS REGULAR MAIL
FOR JURY SUMMONS

| District | Annual No. of Summons | Certified Mail ($1.55 per ltr.) | Regular Mail (20¢ per ltr.) |
|---|---|---|---|
| Alaska | 1,550 | $ 2,402.50 | $ 310.00 |
| Arizona | 3,240 | 5,022.00 | 648.00 |
| California Central | 10,800 | 16,740.00 | 2,160.00 |
| California Eastern | 3,300 | 5,115.00 | 660.00 |
| California Northern | 7,000 | 10,850.00 | 1,400.00 |
| California Southern | 3,480 | 5,394.00 | 696.00 |
| Guam | 235 | 364.25 | 47.00 |
| Hawaii | 1,150 | 1,782.50 | 230.00 |
| Idaho | 550 | 852.50 | 110.00 |
| Montana | 90 | 139.50 | 18.00 |
| Nevada | 1,000 | 1,550.00 | 310.00 |
| Oregon | 2,600 | 4,030.00 | 520.00 |
| Washington Eastern | 1,325 | 2,053.75 | 265.00 |
| Washington Western | 1,500 | 2,325.00 | 300.00 |
| | | $58,621.00 | $7,674.00 |

# UNITED STATES COURTS

Judicial Council Of The Eighth Circuit
United States Court And Custom House
1114 Market Street
St. Louis, Missouri 63101-2068

April 5, 1982

MEMBERS
Hon. Donald P. Lay, Chief Judge
Hon. Gerald W. Heaney
Hon. Myron H. Bright
Hon. Donald R. Ross
Hon. Roy L. Stephenson
Hon. J. Smith Henley
Hon. Theodore McMillian
Hon. Richard S. Arnold
Hon. Albert G. Schatz
Hon. Edward L. Filippine
Hon. Harry H. MacLaughlin

Lester C. Goodchild
Circuit Executive

Mr. William James Weller
Legislative Affairs Officer
Administrative Office of the
United States Courts
Washington, D.C. 20544

Dear Mr. Weller:

Attached is a copy of this circuit's Administrative Order approving the use of regular mail for juror summons instead of certified or registered mail. The Council acted on recommendation of its Committee on the Operation of the Juror System, and after completion of a study concerning the potential yearly savings to the Courts in the Eighth Circuit if they could use regular mail. A copy of that study is enclosed.

It is my understanding that a measure is pending in Congress to permit the federal courts to use regular mail for juror summons. On behalf of the Council, I respectfully request that you transmit the Council's position to Congress.

If there is anything further that we can do to assist in this matter, please feel free to call me.

Sincerely,

Lester C. Goodchild
Circuit Executive

Encl.
LCG/emc

cc: Chief Judge Donald P. Lay
Members of the Circuit Council
Members of the Juror Committee

# UNITED STATES COURTS

Judicial Council Of The Eighth Circuit
United States Court And Custom House
1114 Market Street
St Louis, Missouri 63101-2068

MEMBERS
Hon. Donald P. Lay, Chief Judge
Hon. Gerald W. Heaney
Hon. Myron H. Bright
Hon. Donald R. Ross
Hon. Roy L. Stephenson
Hon. J. Smith Henley
Hon. Theodore McMillian
Hon. Richard S. Arnold
Hon. Albert G. Schatz
Hon. Edward L. Filippine
Hon. Harry H. MacLaughlin

Lester C. Goodchild
Circuit Executive

CCAO - 101

CIRCUIT COUNCIL

ADMINISTRATIVE ORDER

This will certify that the Judicial Council of the Eighth Circuit supports the use by the federal courts of regular mail for a jury summons instead of registered mail.

L C Goodchild

Circuit Executive

April 5, 1982
St. Louis, Missouri

COST COMPARISON
ON USING CERTIFIED MAIL
VERSUS REGULAR MAIL
FOR JURY SUMMONS

| District | Annual No. of Summons | Certified Mail ($1.55 per ltr.) | Regular Mail (20¢ per ltr.) |
|---|---|---|---|
| E. D. Arkansas | 927 | $ 1,436.85 | $ 185.40 |
| W. D. Arkansas | 1,175 | 1,821.25 | 235.00 |
| N. D. Iowa | 1,165 | 1,805.75 | 233.00 |
| S. D. Iowa | 1,400 | 2,170.00 | 280.00 |
| Minnesota | 3,150 | 4,882.50 | 630.00 |
| E. D. Missouri | 1,500 | 2,325.00 | 300.00 |
| W. D. Missouri | 3,152 | 4,885.60 | 630.40 |
| Nebraska | 1,403 | 2,174.65 | 280.60 |
| North Dakota | 1,250 | 1,937.50 | 250.00 |
| South Dakota | 844 | 1,308.20 | 168.80 |
| Total | | $24,747.30 | $3,193.20 |
| | | -3,193.20 | |
| | | $21,554.10 | |

OFFICE OF THE CIRCUIT EXECUTIVE
UNITED STATES COURTS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

CHARLES E. NELSON
CIRCUIT EXECUTIVE

UNITED STATES COURTHOUSE
333 CONSTITUTION AVE., N.W.
WASHINGTON, D.C. 20001-2866

July 16, 1982

Mr. William J. Weller (LAO)
Legislative Affairs Officer
Administrative Office of the
United States Courts
Washington, D. C. 20544

Dear Bill:

This is in response to your memorandum of July 9, 1982 in which you asked for cost comparison data relative to service of summonses to jurors by ordinary first class mail versus use of certified mail.

As indicated in the attached memorandum from James Davey, the Clerk of our District Court, in calendar year 1981 there would have been a savings of $7,843.50 if 5,810 summonses could have been sent by regular mail.

Sincerely,

Charles E. Nelson

Attachment
xc: Clerk Davey, USDC

United States District Court
For the District of Columbia
Office of the Clerk
3rd and Constitution Avenue, N.W.
Washington, D. C. 20001

James F. Davey
Clerk

July 16, 1982

MEMORANDUM TO CHARLES NELSON

SUBJECT: Data on Jury Summonses--Your July 13, 1982 Memorandum

We agree wholeheartedly that the use of ordinary first-class [regular] mail for the service of summonses to prospective jurors is an excellent idea. In calendar year 1981 we would have saved $7,843.50 in mailing costs if we had been permitted to use regular mail rather than certified mail. This savings is computed on the basis of mailing 5,810 summonses at a cost of $1.55 each for certified mail but only 20 cents each for regular mail.

While the cost savings would be significant, perhaps even more important is the fact that regular mail would also be a more effective means of delivering jurors' summonses. In the District of Columbia, both our Court and the Superior Court for the District of Columbia utilize the same pool of prospective jurors. The only difference is that the Superior Court mails their summonses by regular mail whereas we must send ours by certified mail. For the 17-month period January 1981 through May 1982, 16½ per cent of our summonses were returned by the post office because they were either unclaimed or undeliverable. During the same period the Superior Court's rate of summonses returned because they were not claimed or were not deliverable was less than one per cent.

James F. Davey

cc: Kathy Beadnell
Nancy Mayer

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

WILLIAM JAMES WELLER
LEGISLATIVE AFFAIRS
OFFICER

July 20, 1982

Mr. Charles E. Nelson
Circuit Executive
U. S. Courthouse, 3rd & Constitution Avenue, NW.
Washington, D.C. 20001

Dear Charlie:

My personal thanks to you and Jim Davey for your expeditious response to our request for estimated savings figures related to section 3 of H.R. 4395. I realize our request was an inconvenience. I appreciate your cooperation. The information which you have provided has been filed with the House of Representatives.

Sincerely,

Bill

William James Weller
Legislative Affairs Officer

UNITED STATES COURT OF APPEALS
ELEVENTH JUDICIAL CIRCUIT

THOMAS H. REESE
CIRCUIT EXECUTIVE
ATLANTA, GEORGIA 30303

July 20, 1982

Mr. William James Weller
Legislative Affairs Officer
Administrative Office of the
United States Courts
Washington, D.C. 20544

Re: Congressional Request Concerning the Use of Regular Mail for Juror Summons

Dear Mr. Weller:

Pursuant to your letter of July 9, 1982, attached is a cost comparison study on the use of certified mail versus regular mail for jury summons in the Eleventh Circuit.

The study is self-explanatory. Please forward this study to the appropriate Congressional committee.

Sincerely,

Thomas H. Reese

THR:ns

Enclosure

cc: Hon. John C. Godbold
Chief Judges, District Court, Eleventh Circuit
District Court Clerks, Eleventh Circuit

COST COMPARISON
ON USING CERTIFIED MAIL
VERSUS REGULAR MAIL
FOR JURY SUMMONS

DISTRICT COURTS OF THE ELEVENTH JUDICIAL CIRCUIT

For Period
July 1, 1981 THROUGH June 30, 1982

| District | Annual No. of Summons | Certified Mail ($1.55 per letter) | Regular Mail (20¢ per letter) |
|---|---|---|---|
| N.D. Alabama | 5,041 | $7,813.55 | $1,008.20 |
| M.D. Alabama | 2,718 | 4,212.90 | 543.60 |
| S.D. Alabama | 2,312 | 3,583.60 | 462.40 |
| N.D. Florida | 2,735 | 4,239.25 | 547.00 |
| M.D. Florida | 6,826 | 10,580.30 | 1,365.20 |
| S.D. Florida | 19,611 | 30,397.05 | 3,922.20 |
| N.D. Georgia | 8,196 | 12,703.80 | 1,639.20 |
| M.D. Georgia | 1,245 | 1,929.75 | 249.00 |
| S.D. Georgia | 2,276 | 3,527.80 | 455.20 |
| TOTAL: | | $78,988.00 | $10,192.00 |

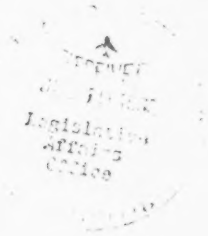
| | |
|---|---|
| CERTIFIED MAIL TOTAL: | $78,988.00 |
| REGULAR MAIL: | -10,192.00 |
| SAVINGS BY REGULAR MAIL: | $68,796.00 |

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

PAUL NEJELSKI
THIRD CIRCUIT EXECUTIVE
PHONE (215) 597-0718

20716 United States Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106

July 16, 1982



William James Weller, Esquire
Legislative Affairs Officer
Administrative Office of the
United States Courts
Washington, D.C. 20544

Re: Juror Summons HR 4395

Dear Bill:

Here is the information requested in your letter dated July 9, 1982. The time period covered is July 1, 1981 to June 30, 1982.

Cost Comparison

| District | Summons* | Mail: Certified (@ $1.55) | Mail: Regular (@ $.20) |
|---|---|---|---|
| Delaware | 175 | 271.25 | 35.00 |
| New Jersey | 10,750 | 16,662.50 | 2,150.00 |
| E.D. Pa. | 7,244 | 11,228.20 | 1,448.80 |
| M.D. Pa. | 4,562 | 7,071.10 | 912.00 |
| W.D. Pa. | 4,378 | 6,785.90 | 875.60 |
| Virgin Islands | 1,021 | 1,582.55 | 204.20 |
| TOTAL | | 43,601.50 | 5,625.60 |

| | |
|---|---|
| Certified | $43,601.50 |
| Regular | 5.625.60 |
| | $37,975.90 |

There are no grand juries in the Virgin Islands.

Sincerely,

Paul Nejelski

Paul Nejelski

PN:jlm

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR
DEPUTY DIRECTOR

WILLIAM JAMES WELLER
LEGISLATIVE AFFAIRS
OFFICER

July 20, 1982

Mr. Paul Nejelski
Circuit Executive
20716 U. S. Courthouse
Independence Mall West, 601 Market Street
Philadelphia, Pennsylvania 19106

Dear Paul:

Thank you very much for responding to our request for cost savings figures resulting from enactment of section 3 of H.R. 4395. I very much appreciate your efforts to help. The information has been filed with the House of Representatives.

Sincerely,

Bill

William James Weller
Legislative Affairs Officer

SAMUEL W. PHILLIPS
CIRCUIT EXECUTIVE
UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

P.O. BOX 6G
RICHMOND, VIRGINIA 23214

July 19, 1982

Mr. William J. Weller
Legislative Affairs Officer
Administrative Office, U. S. Courts
Washington, D. C. 20544

Re: Congressional Request Concerning the Use of Regular Mail for Juror Summons

Dear Bill:

Attached is the "cost comparison" for the Fourth Circuit which you have requested on behalf of Mr. Kastenmeier. If you need anything else, please do not hesitate to ask for it.

With best regards,

Sincerely,

Sam

Samuel W. Phillips

Enclosure

cc: Honorable Harrison L. Winter
Chief Judge, Fourth Circuit

BEST COPY AVAILABLE

COST COMPARISON
ON USING CERTIFIED MAIL
VERSUS REGULAR MAIL
FOR JURY SUMMONS

DISTRICT COURTS OF THE FOURTH CIRCUIT

| District | Annual No. of Summons (1981) | Certified Mail ($1.55 per Ltr.) | Regular Mail ($0.20 per Ltr.) |
|---|---|---|---|
| Maryland | *4,705 | $7,292.75 | $941.00 |
| North Carolina | | | |
| Eastern | *3,678 | $5,700.90 | $735.60 |
| Middle | 1,712 | $2,653.60 | $342.40 |
| Western | 1,144 | $1,773.20 | $228.80 |
| South Carolina | 4,160 | $6,448.00 | $832.00 |
| Virginia | | | |
| Eastern | 3,349 | $5,190.95 | $669.80 |
| Western | 1,950 | $3,022.50 | $390.00 |
| West Virginia | | | |
| Northern | *1,000 | $1,550.00 | $200.00 |
| Southern | 1,710 | $2,650.50 | $342.00 |
| TOTAL | 23,408 | $36,282.40 | $4,681.60 |
| | | -4,681.60 | |
| | | Difference: $31,600.80 | |

*Approximations

JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

COLLINS T. FITZPATRICK
CIRCUIT EXECUTIVE
PHONE (312) 435-5803

July 21, 1982

Mr. William James Weller
Legislative Affairs Officer
Administrative Office of the
United States Courts
Washington, D. C. 20544

Dear Bill:

Pursuant to your memorandum of July 9, 1982, I have enclosed a cost comparison on using certified mail versus regular mail for jury summons.

Sincerely,

Collins T. Fitzpatrick

Enclosure

COST COMPARISON
ON USING CERTIFIED MAIL
VERSUS REGULAR MAIL
FOR JURY SUMMONS

| District | Annual No. of Summons | Certified Mail ($1.55 per ltr.) | Regular Mail (20¢ per ltr.) |
|---|---|---|---|
| Illinois | | | |
| Central | 1,400 | $ 2,170.00 | $ 280.00 |
| Northern | 5,000 | 7,750.00 | 1,000.00 |
| Southern | 1,106 | 1,714.30 | 221.20 |
| Indiana | | | |
| Northern | 5,808 | 9,002.40 | 1,161.60 |
| Southern | 1,267 | 1,963.85 | 253.40 |
| Wisconsin | | | |
| Eastern | 1,354 | 2,098.70 | 270.80 |
| Western | 215 | 333.25 | 43.00 |
| Total | | $25,032.50 | $3,230.00 |
| | | -3,230.00 | |
| | | $21,802.50 | |

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

DANA H. GALLUP
CLERK

1606 JOHN W. MCCORMACK
POST OFFICE AND COURTHOUSE
BOSTON, MASS. 02109
(617) 223-2888

July 22, 1982

Mr. William Weller
Legislative Affairs Office
Administrative Office of the U.S. Courts
Supreme Court Building
Washington, D.C. 20544

Dear Bill:

This is in reply to your memorandum of July 9, 1982, concerning the Use of Regular Mail for Juror Summons, which memo just came to my attention upon return from vacation. I do not have costs comparisons for the various districts within this Circuit. I have checked with some of the District Court clerks in the Circuit and I can see that there is more than one point of view on this matter, so I am not in position to give a circuit-wide position on this question.

I would also point out that those districts that have computer generated mailings have managed to cut down considerably on the personal manhours involved in this work. Finally, with respect to those districts that use the computer, the comparing of $1.55 per letter v. $.20 per letter in the 8th & 9th Circuit charts could well be an overstatement of the savings about which you may wish to be careful. I understand that when the envelopes are presorted there is a reduction in the $1.55 postal rate to, I am told, $.75 per letter plus $.20 if return receipt is requested. This is considerably less than the $1.55 used in the charts.

These observations are not official positions of the Circuit, but rather my personal observations that I send along to you as I do not want to appear to be ignoring your memorandum.

Sincerely yours,

Dana H. Gallup

Clerk.

DHG:mn

UNITED STATES COURT OF APPEALS
FIFTH JUDICIAL CIRCUIT
600 CAMP STREET ROOM 109
NEW ORLEANS LOUISIANA 70130

OFFICE OF THE
CIRCUIT EXECUTIVE

July 22, 1982

Mr. William J. Weller
Legislative Affairs Officer
Administrative Office of the
United States Courts
Washington, D. C. 20544

Dear Mr. Weller:

As suggested in your memorandum of July 9, 1982, I enclose a cost comparison on using certified mail versus regular mail for jury summons in the Fifth Circuit for the period July 1, 1981 - June 30, 1982.

We hope the cost comparison will help support the position of the Judicial Conference in support of provisions in H.R. 4395 which would authorize the service of summonses to prospective jurors by ordinary first-class mail.

Sincerely,

Lydia G. Comberrel

Lydia G. Comberrel
Acting Circuit Executive

LGC:mw
Enc.

FIFTH CIRCUIT

COST COMPARISON
ON USING CERTIFIED MAIL
VERSUS REGULAR MAIL
FOR JURY SUMMONS -
JULY 1, 1981 - JUNE 30, 1982

| District | Annual No. of Summons | Certified Mail ($1.55 per ltr) | Regular Mail (20¢ per ltr) |
|---|---|---|---|
| E. D. Louisiana | 7,240 | $ 11,222.00 | $ 1,448.00 |
| M. D. Louisiana | 1,050 | 1,627.50 | 210.00 |
| W. D. Louisiana | 7,099 | 11,003.45 | 1,419.80 |
| S. D. Mississippi | 2,700 | 4,185.00 | 540.00 |
| N. D. Mississippi | 3,600 | 5,580.00 | 720.00 |
| S. D. Texas | 11,738 | 18,193.90 | 2,347.60 |
| N. D. Texas | 5,236 | 8,115.80 | 1,047.20 |
| E. D. Texas | 3,730 | 5,781.50 | 746.00 |
| W. D. Texas | 3,608 | 5,592.40 | 721.60 |
| Total | 46,001 | $ 71,301.55 | $ 9,200.20 |
| | | - 9,200.20 | |
| Savings to the Government | | $ 62,101.35 | |

UNITED STATES COURTS
JUDICIAL COUNCIL OF THE SECOND CIRCUIT

STEVEN FLANDERS
CIRCUIT EXECUTIVE
(212) 791-0982

U. S. COURTHOUSE
NEW YORK, N. Y. 10007
(FTS) 662-0982

July 5, 1982

Mr. William James Weller
Legislative Affairs Officer
Administrative Office of the
United States Courts
Washington, D.C. 20544

Dear Bill:

In response to your memorandum of July 9, I had the attached cost comparison table prepared for our circuit.

If there is anything further that we can do to assist in this matter, please feel free to call.

Sincerely,

Steven Flanders

Enclosure

COST COMPARISON
ON USING CERTIFIED MAIL
VERSUS REGULAR MAIL
FOR JUROR SUMMONS

| DISTRICT | ANNUAL NO. OF SUMMONS | CERTIFIED MAIL ($1.55 per ltr) | REGULAR MAIL (20¢ per ltr) |
|---|---|---|---|
| Connecticut | 1,160 | $ 1,798.00 | $ 232.00 |
| Northern District of New York | 950 | $ 1,472.50 | $ 190.00 |
| Eastern District of New York | 30,230 | $46,856.50 | $ 6,046.00 |
| Western District of New York | 1,875 | $ 2,906.25 | $ 375.00 |
| Southern District of New York | 26,660 | $41,323.00 | $ 5,332.00 |
| Vermont | 360 | $ 558.00 | $ 72.00 |
| | 61,235 | $94,914.25 | $12,247.00 |

Savings: $82,667.25

BEST COPY AVAILABLE

COST ESTIMATE

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

WILLIAM JAMES WELLER
LEGISLATIVE AFFAIRS
OFFICER

July 20, 1982

Mr. David Beier, III
Counsel, Subcommittee on Courts, Civil Liberties,
and the Administration of Justice
House Judiciary Committee
2137 Rayburn House Office Building
Washington, D.C. 20515

Dear David:

As agreed during our telephone conversation yesterday, I am, to the extent possible, responding today to your request for two specific "cost estimate" figures.

First, you asked us to estimate costs related to enactment of section 1 of H.R. 4395 which would extend to Federal jurors coverage under the Federal Employees Compensation Act. In his prepared statement submitted to you for hearings on June 22, Judge Hunter reported that during the past several years we have received reports of no more than 35 injuries to Federal jurors. Judge Hunter also noted, however, the "catch 22" situation presently prevailing: Given the present lack of a means to financially compensate jurors for injuries, there is a strong possibility that many incidents of injury are not recorded. In May of 1978 the Administrative Office's General Counsel, cognizant of the "catch 22 problem", advised Mr. Kastenmeier by letter of our belief that there probably would not be more than 200 instances of juror injury in any one year. In that correspondence he noted that our limited experiences with reported injuries suggested that the average cost per injury would probably not exceed $100. Given the reality of inflation, we would now revise that dollar figure to $125. Thus, our current estimated maximum cost in any one year would be $25,000.

Second, you asked me to obtain estimated "cost savings" figures similar to those provided by the Eighth and Ninth Circuits as appendices to Judge Hunter's prepared statement. Although I have asked each circuit to file with my office estimated figures as soon as possible, as of today I have received estimated figures only from the Third and District of Columbia Circuits. The Third Circuit estimates that a savings of $38,000 per year would result from enactment of section 3 of the bill. The District of Columbia Circuit estimates a savings of $7,850.

Obviously, savings derived from enactment of section 3 should far exceed the cost of enactment of section 1 of H.R. 4395. As other circuits file their estimated savings figures, I will advise you of it.

Sincerely,

Bill

William James Weller
Legislative Affairs Officer

AMERICAN BAR ASSOCIATION RECOMMENDATION

AMERICAN BAR ASSOCIATION
SPECIAL COMMITTEE ON COORDINATION
OF FEDERAL JUDICIAL IMPROVEMENTS
REPORT TO THE HOUSE OF DELEGATES

## RECOMMENDATION

The Special Committee on Coordination of Federal Judicial Improvements recommends adoption of the following resolution:

BE IT RESOLVED, that the American Bar Association supports enactment of legislation such as H.R.4395, 97th Congress:

(1) To provide for the taxing of attorneys' fees as court costs, for a court-appointed attorney in an action brought by a juror to protect his employment rights;

(2) To extend statutory compensation for work injuries to all persons rendering federal jury service; and

(3) To authorize the service of jury summonses by ordinary mail.

## REPORT

The above recommendation was submitted by the Special Committee to the House of Delegates at the 1982 Midyear Meeting. It was withdrawn by the Special Committee because some members of the House wished to have more time to consider the matter.

H.R.4395, developed by the Judicial Conference of the United States, was introduced in Congress by Representative Kastenmeier (D-WI), chairman of the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, on August 4, 1981. The bill is presently pending in Rep. Kastenmeier's subcommittee. The bill incorporates the three reforms described in the resolution, each of which is dealt with separately below.

### Taxation of Juror Attorneys' Fees

Under present law, an employee is protected from discharge, intimidation, and coercion by an employer by reason of such employee's service as a juror in federal court, 28 U.S.C. §1875. Section 1875, which was added to Title 28 by the Jury System Improvement Act of 1978 (Public Law 95-572, 92 Stat. 2456), further provides that an employer who violates this section shall be subject to legal action for damages, injunctive relief, and a civil penalty.

Subsection (d) of section 1875 presently provides that an individual claiming a violation of his rights under this section may apply to the district court for a court-appointed and government-compensated attorney, which attorney the court shall appoint upon a finding of probable merit in such claim; that where the employee has retained his own counsel, the court may award such an employee who ultimately prevails a reasonable attorney's fee as part of the costs; and that the court

may award a prevailing employer a reasonable attorney's fee as part of the costs if the action is determined to have been frivolous, vexatious, or brought in bad faith. Subsection (d) does not explicitly provide, however, for the taxation of an attorney's fees against an employer in a situation where the juror's counsel has been appointed by the court and compensated from government funds.

Because the prospect of being taxed attorneys' fees serves as a strong deterrent to employer misconduct, such taxation should be allowed regardless of whether an individual has retained counsel at his own expense or has been assisted by a court-appointed attorney compensated by the government. In the absence of statutory authority, however, courts are without discretion to create exceptions to the "American rule" that attorneys' fees are not ordinarily recoverable by prevailing parties in federal litigation, Alyeska Pipeline Service Co. v. Wilderness Society et al., 421 U.S. 240 (1975). It is not clear whether section 1875 (d) currently confers upon the court the authority to tax attorneys' fees where such fees have been expended by the government. Enactment of legislation such as H.R.4395 would eliminate this uncertainty by making such authorization express.

Legislation providing for the taxation of juror attorneys' fees for a court-appointed attorney passed the Senate in the 96th Congress (S.1187), but saw no action in the House of Representatives.

Injury Compensation for Jurors

Although the Federal Employees' Compensation Act (5 U.S.C. §8101 et seq.) provides compensation for federal employees who are injured while serving as jurors in federal courts, the Act has been administratively interpreted to exclude coverage for private citizens on federal jury duty. On several occasions, the U.S. Department of Labor has rejected federal jurors' claims for injury compensation on the grounds that jurors would not be considered "employees" of the federal government within the meaning of the Act.

Strong policy reasons exist for bringing all federal jurors within the coverage of the Federal Employees' Compensation Act. Jurors provide a valuable services to the government. While in actual service as a petit or grand juror, the citizen juror should rationally be accorded the benefit of protection in case of a "job-related" injury. What begins as a fulfillment of a high duty of citizenship through public service to the government could be turned into an economic catastrophe for the juror, in the event of an accident or injury while serving. Under present law, a person injured while serving as a juror cannot recover compensation unless he can bring his case under the Federal Tort Claims Act by proving negligence on the part of the government or its agent, a difficult burden. While jurors are not frequently injured, it is unfair that a federal employee receive compensation while a private citizen serving in the same capacity, does not.

H.R.4395 limits and defines when the juror is deemed to be in the performance of duty, ensuring that claims for compensation shall not be granted except for strictly duty-related injuries. The bill requires the protected juror to be in actual attendance in court or en route to or from court, such as the taking of a view, but would not include a portal-to-portal situation where a juror is coming to the court from his home or returning to his home after a day in court. Jurors in active service would be considered employees of the federal government only for the purpose of their compensation

as jurors and for no other purpose. Recovery under the Federal Employees' Compensation Act would be the exclusive remedy of the juror against the United States for such injuries.

Legislation providing for compensation for injured jurors was passed by the U.S. Senate in the 95th Congress on April 27, 1978, as Title III of S.2074, but this portion of the bill was not acted upon by the House of Representatives.

Service of Summons for Jury Service

H.R.4395 would amend 28 U.S.C. §1866(b) with respect to the manner of serving a summons upon prospective jurors, summoning them to court for jury service. This subsection presently requires that these jury summonses shall be served personally, or by registered or certified mail. In practice, such summonses are now served nearly always by mail rather than by personal service. H.R.4395 would permit the service of such summonses by regular, first-class mail as well as by the methods of service presently authorized.

It is believed that service of jury summonses by ordinary mail would reduce mailing costs, would lessen the clerical burden of readying such summonses for service, and would improve the delivery rate of such summonses by avoiding the reluctance of some persons to accept and sign for a registered or certified letter. The bill, however, preserves the discretion of the courts to continue to require service of such summonses personally or by registered or certified mail, as at present. Those courts which face a substantial problem in achieving voluntary compliance with the summonses by prospective jurors may wish to adhere to the present practice in order to have proof of the summons delivery in the event that its recipient must be ordered to show cause for failure to appear. Likewise, individual jurors who fail to respond to the initial summons could, under this bill, still be served personally or by registered mail with a follow-up summons as a prelude to any order to show cause for non-appearance.

Adoption of the proposed, or similar, legislation is an important and needed step toward improving the efficiency of jury selection and the conditions of service imposed upon federal jurors.

Respectfully submitted,

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